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Attorney's Docket No. 045600/275110

PATENT



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re: Hammer et al.

Confirmation No.: 3263

Appl. No.: 10/797,270

Filed: March 10, 2004

For: METHODS TO CONFER HERBICIDE RESISTANCE

Mail Stop Petition  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**Petition To Grant Filing Date And To Refund Petition Fee**

As set forth in MPEP §506.02, Applicant hereby petitions to grant the proper filing date of March 10, 2004 rather than March 11, 2004 for the above-identified patent application. The following is enclosed as evidence of March 10, 2004 being the correct filing date under 37 CFR § 1.10:

1. A copy of the Cover Sheet for the Application showing the Express Mail Number;
2. A copy of the Express Mail Receipt marked by the United States Post Office as being mailed on March 10, 2004; and
3. A copy of our return post card from the United States Patent Office showing that Applicant was improperly given the filing date of March 11, 2004 instead of March 10, 2004.

There is no error on the part of Applicant. Accordingly, Applicant respectfully requests the granting of March 10, 2004 as the filing date.

A check in the amount of \$130.00 in payment of the petition fee as set forth in 37 CFR §1.17(i) is enclosed herewith. Any additional fee may be charged or any overpayment credited

06/16/2004 WABRHM1 00000051 10797270

01 FC:1460

130.00 DP

In re: Hammer et al.  
Appl. No.: 10/797,270  
Filing Date: March 10, 2004  
Page 2

to our Deposit Account No. 16-0605. Because no defect existed, however, Applicant also respectfully requests refund of the petition fee.

Respectfully submitted,

*Karen M Morse*

Karen M. Morse  
Registration No. 54,324

**CUSTOMER NO. 00826**

**ALSTON & BIRD LLP**

Bank of America Plaza

101 South Tryon Street, Suite 4000

Charlotte, NC 28280-4000

Tel Raleigh Office (919) 862-2200

Fax Raleigh Office (919) 862-2260

**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on June 9, 2004

*Nora C Martinez*

Nora C. Martinez



**UTILITY  
PATENT APPLICATION  
TRANSMITTAL**

(Only for new nonprovisional applications under 37 CFR 1.53(b))

Attorney Docket No. 045600/275110

First Inventor Hammer et al.

Title METHODS TO CONFER HERBICIDE RESISTANCE

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ADDRESS TO: **MAIL STOP PATENT APPLICATION  
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**COPY**

Transmitted herewith for filing in the United States Patent Office is a patent application for:

Inventors: Philip E. Hammer, Cary, NC  
Todd K. Hinson, Rougemont, NC  
Nicholas B. Duck, Apex, NC  
Michael G. Koziel, Raleigh, NC

Assignee of this invention is Athenix Corporation

1. ☒ The Filing Fee has been calculated as shown below:  
2. ☒ Applicant claims Small Entity Status. See 37 CFR 1.27.

	No. Filed	No. Extra	Small Entity		Large Entity	
			Rate	Fee 1	Rate	Fee 0
BASIC FEE				\$ 385		\$ 0
TOTAL CLAIMS:	17 - 20 =	0	X 9 =	\$ 0	x 18 =	\$ 0
INDEP CLAIMS:	4 - 3 =	0	X 43 =	\$ 43	x 86 =	\$ 0
[ ] MULTIPLE DEPENDENT CLAIMS PRESENTED			+145 = \$		+290 = \$	
*If the difference in Column 1 is less than zero, enter "0" in Column 2.			TOTAL	\$ 428	TOTAL	\$

The Commissioner is hereby authorized to credit overpayments or charge the following fees to Deposit Acct. No. 16-0605.

- a. ☒ Fees required under 37 CFR 1.16 (National filing fees).  
b. ☒ Fees required under 37 CFR 1.17 (National application processing fees) including any extension of time fees under 37 CFR § 1.136(a) that are required for consideration of papers filed during prosecution.

☒ A check in the amount of \$428 for the filing fee is enclosed.

☐ The above filing fee will be paid along with Applicant(s) Response to the Notice to File Missing Parts.

3. ☒ Specification; Total Pages 45

4. ☒ 4 Sheets of Drawing(s) (35 USC 113)

5. ☐ Declaration and Power of Attorney; [Total Pages     ]

a. ☐ Newly executed (original or copy)

b. ☐ Copy from a prior application (37 CFR 1.63(d))  
(for continuation/divisional with Box 18 completed)

i. ☐ DELETION OF INVENTOR(S) Signed statement attached deleting inventor(s) named in the prior application, see 37 CFR 1.63(d)(2) & 1.33(b).

6. ☒ Application Data Sheet. See 37 CFR 1.76

7. ☐ CD-ROM or CD. a duplicate, large table or Computer Program, Appendix)
8. Nucleotide and/or Amino Acid Sequence Submission (if applicable, all necessary)
- a. ☒ Computer Readable Copy (CRF)
- b. ☐ Request for Transfer of Computer Readable Form of Sequence Listing under 37 CFR § 1.821(e) and MPEP 2422.05 (must be compliant with new rules)
- c. ☒ Specification Sequence Listing on:
- i. ☐ CD-ROM or CD-R (2 copies); or
- ii. ☒ Paper (44 Pages)
- d. ☒ Statements verifying identity of above copies

#### ACCOMPANYING APPLICATION PARTS

9. ☐ Assignment Papers (cover sheet & document(s) (including a check for the \$40.00 fee)
10. ☐ 37 CFR 3.73(b) Statement (when there is an assignee); ☐ Power of Attorney
11. ☐ English Translation Document (if applicable)
12. ☐ Information Disclosure Statement (IDS)/PTO-1449; \_\_\_ Copies of IDS Citations
13. ☐ Preliminary Amendment
14. ☒ Return Receipt Postcard (MPEP 503) (Should be specifically itemized)
15. ☐ Certified Copy of Priority Document(s) (if foreign priority is claimed)
- ☐ Foreign Priority is claimed as Application No. \_\_\_, filed
16. ☐ Nonpublication Request under 35 U.S.C. 122(b)(2)(B)(i). Applicant must attach form PTO/SB35 or its equivalent.
17. ☐ Request for Early Publication Under 37 CFR § 1.219. Fee of \$300.00 is enclosed.
18. If a CONTINUING APPLICATION, check appropriate box and supply the requisite information below and in a preliminary amendment, or in an Application Data Sheet under 37 CFR 1.76:
- ☐ Continuation ☐ Divisional ☐ Continuation in Part (CIP)
- of prior Application No: \_\_; Filed

Prior Application Information: Examiner

Group/Art Unit:

For CONTINUATION or DIVISIONAL APPS only: The entire disclosure of the prior application, from which an oath or declaration is supplied under Box 5b, is considered a part of the disclosure of the accompanying continuation or divisional application and is hereby incorporated by reference. The incorporation can only be relied upon when a portion has been inadvertently omitted from the submitted application parts.

19. CORRESPONDENCE ADDRESS

CUSTOMER NUMBER 00826

Signature:

Karen M. Morse  
Agent of Record: Karen M. Morse  
Agent Registration No. 54,324

EV185285533US

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Bank of America Plaza  
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Charlotte, NC 28280-4000  
Tel Raleigh Office (919) 862-2200  
Fax Raleigh Office (919) 862-2260

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Nora C. Martinez  
Nora C. Martinez

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Atty. Dkt. No. 045600/275110

Kindly acknowledge receipt of the accompanying UTILITY PATENT

APPLICATION with Application Transmittal Cover Sheet for: Inventor(s):  
Hammer et al.

Title of Invention: METHODS TO CONFER HERBICIDE RESISTANCE

Pages of Spec. (including claims and abstract) 45; No. of Claims 17

No. of Drawing Sheets 4; Declaration Enclosed NO

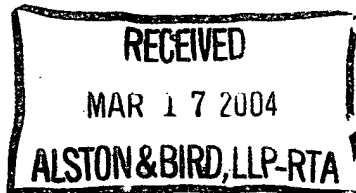
Other Documents: Application Data Sheet (4 pages); Statement in Support of  
Sequence Listing; Sequence Listing--Paper (44 pages) and CRF

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Please place office stamp hereon and Return Postcard to : Nora C. Martinez/KMM

**ALSTON & BIRD LLP**

*Lockhart ok 3/23/04 nm*



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10/797270



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